

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

Angad Ganpati Halle
Age - 54 years, Occ - Labour
R/o Bhadgaon, Taluka and District - Latur

1. Kesharbai Dnyanoba Kamble RESPONDENTS
Age - 51 years, Occ - Agriculture & Household

2. Bharat Dnyanoba Mane
Age - 56 years, Occ - Agriculture

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Mr. Satish S. Manale, Advocate for the appellant

DATE : 11th APRIL, 2017

1. Heard learned advocate for the appellant.
2. Learned advocate vehemently submits that the description as has been given by the appellant - defendant in respect of suit property is more probable than the one given in the plaint as 'suit property'. Learned advocate further submits that in the cross-examination of the witness examined on behalf of the plaintiffs, it becomes clear that the defendant is in possession of

the property claimed and plaintiffs, in the circumstances, ought not to have succeeded in getting decree of declaration and injunction.

3. According to learned advocate even before grant of “Kabala”, by government, appellant - defendant had been in possession of suit property. The record amply bears out the same, as would be evident from Exhibit-35, a *panchanama*. The trial as well as appellate courts in the circumstances have erred in restraining the defendant from obstructing alleged possession of the plaintiffs over suit property.

4. Although it is being submitted so, in paragraph No.13 as well as in paragraph No.15, of its judgment, the appellate court has observed thus -

“ 13. Adv. Pande drawn my attention towards the panchanama at exh.35. This panchanama was prepared on 16.3.1993 by Revenue Circle Inspector i.e. prior to the allotment of Kabala to the plaintiff. In the said panchanama, it was mentioned that defendant has kept rubbish on the suit plot. Relying on this contents Adv. Pande submitted that this contents itself indicates that defendant is in possession over the suit plot even prior to the allotment of Kabala to the plaintiff but lower court has not considered this aspect. In respect of the panchanama I would like to state that this panchanama shown to be

prepared in presence of defendant Angad but in the cross-examination he denied his presence at the time of panchanama. Panchanama only shows that defendant kept rubbish on the suit plot. Mere throwing rubbish not amounting to a possession but the same panchanama shows that towards western side of the suit plot there is house of defendant Angad which was given by the Government to him. Plaintiff, in the year 1990 resided in the suit plot but due to fire her hut was burnt. Thus, the panchanama clearly shows that the suit plot is not a part and parcel of the defendants house but it was having separate situation than the house of the defendant. It further shows separate existence of suit plot and house of the defendant. Panchanama clearly shows possession of the plaintiff over the suit plot prior to 1990. Therefore, merely keeping rubbish on the plot do not amount to be a possession of the defendant over the suit plot.

15. *Adv. Pande drawn my attention towards the photographs exh.87 to exh.89. He submitted that these photographs filed by defendant are admitted by the plaintiffs witness Gopal Kamble which itself indicates that towards the western side of Bhatangali to Bhadgaon road the house of defendant is situated. On perusal of these photographs it appears that there was a open space in between Bhatangali to Bhadgaon road the house of defendant. Some bricks and stones are kept on that open space. Here defendant has not given any explanation as to who kept those bricks and stones on the open space. To the contrary evidence of plaintiff indicates that she is intending to construct the suit house over the suit plot, therefore, she brought building materials. She has taken permission for*

construction and thereafter defendants caused obstruction. Therefore, merely because the bricks kept on the open space is not enough to hold the possession of defendant. To the contrary photographs filed by the defendant itself shows that there was a open space in between the house of defendant and Bhatangali to Bhadgaon road. ”

5. Aforesaid observations as are appearing, are not shown to be perverse in any way.

6. In the circumstances, the argument that other view is possible would not tilt this case in favour of the appellant, while two courts have appreciated evidence on record and have given concurrent findings on the same. As stated above, the same do not appear to be perverse. It is not a case wherein it can be said that a substantial question of law would arise for consideration in the second appeal. Second appeal as such, is dismissed.

7. In view of dismissal of second appeal, civil application No.4401 of 2017 does not survive and is disposed of.

[SUNIL P. DESHMUKH, J.]